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March 11, 1996

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William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

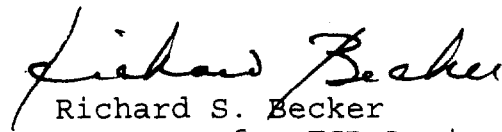
Re: Revision of Part 22 and  
Part 90 of the Commission's  
Rules to Facilitate Future  
Development of Paging Systems  
WT Docket No. 96-18  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of TSR Paging Inc. are one (1) original paper, nine (9) paper copies, one (1) silver master microfiche, and two (2) diazo duplicate microfiche copies of Reply Comments with respect to the Interim Licensing Proposal included in the Notice Of Proposed Rulemaking released by the Commission on February 9, 1996, in the above-captioned proceeding.

Should you have any questions with respect to this matter, please communicate directly with this office.

Sincerely,

  
Richard S. Becker  
Attorney for TSR Paging Inc.

Enclosures

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MAR 11 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Revision of Part 22 and ) WT Docket No. 96-18  
Part 90 of the Commission's )  
Rules to Facilitate Future )  
Development of Paging Systems )  
 )  
Implementation of Section ) PP Docket No. 93-253  
309(j) of the Communications )  
Act -- Competitive Bidding )

To: The Commission

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REPLY COMMENTS

TSR Paging Inc. ("TPI"), by its attorneys and pursuant to 47 C.F.R. §1.415, hereby submits these Reply Comments in response to the Interim Licensing Proposal adopted by the Commission in its Notice Of Proposed Rulemaking<sup>1</sup> in the above-captioned rulemaking proceeding.<sup>2</sup> In support of these Reply Comments, the following is respectfully shown.

I. Introduction

1. In the NPRM, the Commission proposed extensive revisions to its regulation of common carrier paging ("CCP") services pursuant to Part 22 of the Commission's Rules and private paging

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<sup>1</sup>Notice Of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52, ¶¶139-149 (February 9, 1996) (hereinafter "NPRM").

<sup>2</sup>As specified at paragraph 153 of the NPRM, TPI is filing the instant Reply Comments only with respect to the Interim Licensing Proposed adopted by the Commission at paragraphs 139-149 of the NPRM. TPI is currently reviewing the remaining proposals specified in the NPRM and TPI anticipates that it will submit additional comments with respect to these proposals by the filing deadline for such comments, which the Commission has currently set at March 18, 1996.

("PCP") services pursuant to Part 90 of the Commission's Rules. Specifically, the Commission proposed to move from the current site-specific regulatory approach to a geographic licensing approach where the Commission will issue single licenses for geographic areas that encompass many sites.<sup>3</sup> The Commission also proposed to adopt competitive bidding rules for mutually-exclusive applications for geographic paging licenses.<sup>4</sup> In addition to its geographic licensing and competitive bidding proposals, the Commission also adopted an Interim Licensing Proposal, which included numerous provisions regarding Commission acceptance and processing of applications for both CCP and PCP Channels during the pendency of the proceeding initiated by adoption of the NPRM.<sup>5</sup>

2. On March 1, 1996, TPI submitted its comments ("Comments") with respect to the Interim Licensing Proposal. TPI has now reviewed the comments filed by other participants in the subject proceeding and TPI submits these Reply Comments with respect thereto.

## **II. Paging Application Freeze**

3. In its Comments, TPI demonstrated that as the operator of large, multi-state CCP and PCP wide-area paging systems, it is vital that TPI retain the operational flexibility to add, modify and delete paging transmitters as quickly and efficiently as possible. TPI made clear that although it recognized the

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<sup>3</sup>NPRM at ¶1.

<sup>4</sup>Id.

<sup>5</sup>Id. at ¶¶139-149.

Commission's need to impose a freeze on acceptance and processing of CCP and PCP paging applications during the pendency of the above-captioned proceeding, the Commission must act rapidly on the proposals specified in the NPRM to minimize the adverse consequences that will result if the freeze remains in effect for more than a few months.

4. The bulk of the comments in response to the Interim Licensing Proposal opposed the freeze and requested that the Commission immediately lift the freeze.<sup>6</sup> Many commenters also pointed out that Commission freezes in other services have lasted for many years despite the Commission's best intentions to expedite resolution of the underlying rulemaking proceedings.<sup>7</sup>

5. In reply to these comments, TPI reiterates its contention that the Commission must act as quickly as possible on the NPRM to minimize the adverse effects of the freeze. Many commenters explained in detail the negative effects of a prolonged freeze on both paging carriers and paging subscribers and TPI confirms that it too will suffer these negative effects if the freeze is not lifted promptly.

6. In an attempt to balance the Commission's need for a temporary freeze and the industry's need for prompt action on the NPRM, TPI respectfully suggests the following compromise. Specifically, the Commission should make clear that the freeze will

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<sup>6</sup>E.g., "Emergency Petition For Immediate Withdrawal Of Freeze" filed by Coalition For A Competitive Paging Industry, p.1.

<sup>7</sup>E.g., "Joint Comments On Interim Licensing Proposal" filed by AACS Communications, Inc. et al., p.24.

be temporary and that the freeze will terminate on a fixed date that TPI suggests should be no more than six (6) months after the February 9, 1996, release date of the NPRM. This will give the Commission adequate time to review all comments in response to the NPRM and determine whether to adopt geographic licensing for CCP and PCP paging systems. If a decision is not reached by the target date, the Commission should either lift the freeze entirely or broaden the exemptions to the freeze to allow paging carriers more latitude to modify and expand their existing systems.

7. In this regard, certain commenters proposed an expansion of the exception to the freeze for "internal" transmitter sites, i.e., new and/or modified co-channel transmitter sites whose interference contour(s) are encompassed by the composite interference contour(s) of incumbents' CCP and PCP systems. Specifically, these commenters proposed to allow applications for additional co-channel CCP and PCP transmitters that would qualify as "fill-in" transmitters, i.e., transmitters whose interference contours are overlapped by more than fifty percent (50%) by the composite interference contour(s) of the existing licensee's co-channel system.<sup>8</sup>

8. TPI respectfully submits that if the Commission does not

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<sup>8</sup>"Joint Comments Of Page Telecommunications L.L.C. and Heartland Communications, Inc. On Interim Licensing Procedures," p.4-5; "Comments On Interim Licensing Proposal" filed by Brown & Schwaninger, p.3-4. A similar proposal based primarily on mileage separation between the new and existing co-channel transmitter sites was proposed in "Comments Of Ameritech Mobile Services, Inc. On Interim Licensing Proposal", p.9, and would also be acceptable to TPI.

act on the NPRM by the target date, the Commission should make clear that the freeze will either be lifted entirely or modified to expand the "internal" transmitter site exception to the freeze to permit filing and processing of applications for "fill-in" transmitters. TPI believes that this compromise will both provide the Commission with adequate time to achieve the regulatory goals underlying the freeze, while at the same time giving the paging industry certainty as to the maximum duration of the freeze.

### **III. Clarification of PCP Filing Procedures**

9. Like TPI, many commenters sought clarification by the Commission with respect to various aspects of the Interim Licensing Proposal and its impact on Part 90 PCP licensees.<sup>9</sup> None of the commenters, however, specifically raised the issue identified in TPI's Comments regarding the procedures by which Part 90 PCP licensees may permissibly add and/or modify sites whose interference contours do not extend existing interference contours.

10. Accordingly, TPI reiterates its request that the Commission clarify paragraph 141 of the NPRM to allow Part 90 licensees to install such new or modified transmitter sites: (i) without any notification whatsoever to the Commission, as long as the licensee retains "pertinent technical and administrative information" and makes that information available to the Commission; (ii) if the licensee wishes to obtain interference protection for the new or modified site, the licensee may submit an

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<sup>9</sup>E.g., "Comments Of The Personal Communications Industry Association ["PCIA"] On Interim Licensing Procedures," p.20-38 (hereinafter "PCIA Comments").

FCC Form 489 notification to the Commission advising of the new or modified facilities; and (iii) because these sites are "internal" sites, it is not necessary to obtain prior frequency coordination for these additions or modifications.<sup>10</sup>

#### IV. Nationwide Exclusive PCP Frequencies

11. In its Interim Licensing Proposal, the Commission exempted from its freeze CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel.<sup>11</sup> TPI demonstrated that it is the licensee of a "Phase II" nationwide exclusive PCP system on the frequency 929.2125 MHz ("TPI Nationwide System") and that TPI is currently completing construction of the TPI Nationwide System pursuant to an extended implementation authorization granted to TPI by the Commission on December 1, 1995.<sup>12</sup> TPI demonstrated that pursuant to Section 90.495(c) of the Commission's Rules, TPI has already been granted nationwide exclusivity on 929.2125 MHz.<sup>13</sup> As a result, TPI pointed out that the Commission should clarify the NPRM to make clear that even though TPI is now completing construction of the TPI Nationwide System within TPI's authorized construction period, TPI must be considered a licensee of a PCP nationwide exclusive system on 929.2125 MHz. As such, TPI believes that it should be permitted to install additional co-channel

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<sup>10</sup>At most, the Commission may wish to require that PCP licensees notify PCIA of installation of the new or modified facilities using a Form 489 application.

<sup>11</sup>NPRM at ¶142.

<sup>12</sup>See Comments, p.4, 8-12, 17-20.

<sup>13</sup>Id.

transmitter sites without restrictions pursuant to the exception to the freeze specified at paragraph 142 of the NPRM.<sup>14</sup>

12. Commenters agreed that the Commission's treatment of exclusive PCP systems in the Interim Licensing Proposal was unclear and should be clarified.<sup>15</sup> Several commenters reiterated TPI's position that the Commission's attempt to treat "Phase II" PCP exclusive licensees as having pending requests for "permanent" exclusivity that would be dismissed by the Commission is in direct violation of Section 90.495(c) of the Commission's Rules, which grants exclusivity upon "initial licensing" without any additional Commission action.<sup>16</sup> Other commenters directly supported TPI's assertion that exclusive PCP licensees must be permitted to complete construction of their authorized systems within their authorized construction periods.<sup>17</sup> For nationwide exclusive PCP systems, commenters agreed that this construction should be able to

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<sup>14</sup>As specified in TPI's Comments, TPI will also make clear in its comments on the remaining proposals set forth in the NPRM that the Commission cannot and should not attempt to license on a geographic basis frequencies such as 929.2125 MHz, for which Phase II nationwide exclusivity has already been granted pursuant to Section 90.495(c) of the Commission's Rules.

<sup>15</sup>E.g., "Interim Comments Of Paging Network, Inc.," p.15.

<sup>16</sup>47 C.F.R. §90.495(c); "Initial Comments Of Diamond page Partnerships, AmericaOne and Affiliated Entities In Phase 1 Issues," p.7; "Comments Of Nationwide Paging, Inc. And (800) Page-USA, Inc. On Interim Licensing Proposal," p.7-9; "Comments Of Metrocall Inc. On Interim Licensing Proposal," p.4-7.

<sup>17</sup>"Comments Of PageMart, Inc.," p.5-7 (hereinafter "PageMart Comments"); "Comments Of Mobilemedia Communications, Inc. On Interim Licensing Proposal," p.17 (hereinafter "Mobilemedia Comments").



proceed without regard to the freeze.<sup>18</sup>

13. Consistent with these comments, TPI respectfully reiterates its position that the Commission must clarify its Interim Licensing Proposal to make clear that even though TPI is now completing construction of the TPI Nationwide System within TPI's authorized construction period, TPI is a licensee of a PCP nationwide exclusive system on 929.2125 MHz, who is permitted to install additional co-channel transmitter sites pursuant to the exception to the freeze specified at paragraph 142 of the NPRM. Moreover, the Commission must make clear that Commission licensees who have been granted licenses for exclusive PCP systems have already been granted exclusivity pursuant to Section 90.495(c) of the Commission's Rules and that these licensees are not currently prosecuting "pending" requests for "conditional" or "permanent" exclusivity.

14. TPI must also remind the Commission that under existing Commission Rules, no further licensing on channels like 929.2125 MHz can occur at any location throughout the country because these frequencies have already been licensed on a nationwide exclusive basis.<sup>19</sup> Moreover, licensees on these nationwide exclusive frequencies, like TPI, may still have a significant amount of time available to complete construction of their systems, or at least a sufficient portion of their systems to comply with Section 90.495(a) exclusivity requirements. Accordingly, TPI must

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<sup>18</sup>PageMart Comments at 5-7; Mobilemedia Comments at 17.

<sup>19</sup>47 C.F.R. §§90.495(b), 90.495(b)(3).

reiterate its position that the Commission's claims that Phase II nationwide exclusive licensees will be protected by the incumbent status of only those transmitters licensed as of the February 8, 1996, adoption date of the NPRM is incorrect and must be rejected.

**V. Secondary Licensing**

15. In its Comments, TPI opposed the Commission's proposal to permit secondary licensing of non-"internal" paging transmitters. Commenters generally agreed with TPI's position<sup>20</sup> and TPI hereby reiterates its opposition to secondary licensing.

**VI. 931 MHz Reconsideration Proceedings**

16. In its Comments, TPI pointed out that before the Commission can properly implement its proposed geographic licensing of 931 MHz CCP Channels, the Commission must first address the outstanding appeals surrounding incumbent systems that have been operating on these channels for several years. TPI demonstrated that only by acting in cases such as that surrounding 931 MHz CCP Lottery No. PMS-31 can the Commission provide the finality that all existing incumbents and potential geographic license bidders require to successfully value the geographic licenses and establish bidding strategies to obtain those licenses.

17. None of the other commenters raised this issue in their comments. TPI continues to believe, however, that the Commission must address this important issue before proceeding with geographic licensing of paging channels as proposed in the NPRM.

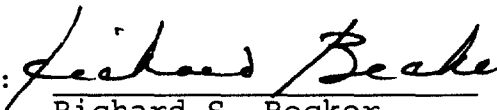
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<sup>20</sup>E.g., Mobilemedia Comments at 11-12; PCIA Comments at 39-40.

**WHEREFORE**, TPI respectfully submits these Reply Comments with respect to the Interim Licensing Proposal that is part of the Commission's NPRM in the above-captioned proceeding.

Respectfully submitted,

**TSR PAGING INC.**

By:   
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Date: March 11, 1996

**CERTIFICATE OF SERVICE**

I, Jeffrey E. Rummel, an associate in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 11th day of March, 1996, sent by First Class United States mail, postage prepaid, copies of the foregoing "**REPLY COMMENTS**" to the following:

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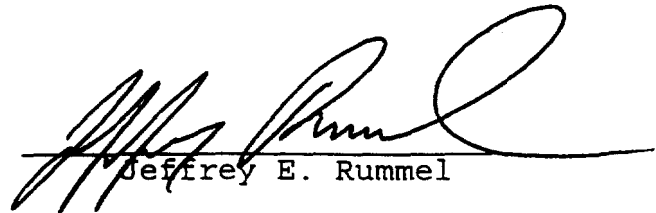
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Jeffrey E. Rummel

Attachment A

## DOCUMENT OFF-LINE

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